TABLE OF CONTENTS

PAGE

COUNTER-STATEMENT OF QUESTION INVOLVED 1

COUNTER-STATEMENT OF THE CASE 2

ARGUMENT:

The petition for writ of certiorari should be denied because the motion for intervention below was properly denied as being grossly out of time as well as wholly unnecessary inasmuch as petitioners' interests were adequately represented by the named parties 4

CONCLUSION 8

Cases Cited

Baltimore Trust Co. v. Interocean Oil Co., 30 F. Supp. 484 (D. Md. 1940) 6

Brunson v. Rutherford Lodge No. 547, 128 N.J. Super. 66, 319 A2d 80 (Law Div. 1974) 7

Clark v. Brown, 101 N.J. Super. 404, 244 A2d 514 (Law Div. 1968) 5

Cornelius v. Benevolent Protective Order of the Elks, 382 F.Supp. 1183 (D. Conn. 1974) 7

Jacobs v. Volney Felt Mills, 47 F.Supp. 439 (N.D. Ind. 1942) 6

Junior Chamber of Commerce v. U.S. Jaycees, 495 F2d 883 (10th Cir. 1974), cert. den. 419 U.S. 1026 (1974) 7

State v. Lanza, 39 N.J. 595, 190 A2d 374 (1963) app. dis. cert. den. 375 U.S. 451 (1964) 5

PAGE

Township of Hanover v. Town of Morristown, 118 N.J. Super. 136, 286 A2d 728 (Ch. Div. 1972), aff'd 121 N.J. Super. 536, 298 A2d 89 (App. Div. 1972) 5, 6

Statutes Cited

N.J.S.A. 10:5-1 et seq. 2

N.J.S.A. 10:5-5 (l) 3

Rules Cited

New Jersey Court Rules:

4:33-1 4-6

4:33-2 ..... 4, 5, 7

BLEED THROUGH

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. A-752

LACKAWANNA, NORTHERN NEW JERSEY AND WATCHUNG POWER SQUADRONS,

Petitioners,

vs.

MARILYN C. HINDEN, VERNON N. POTTER, Acting Director, DIVISION ON CIVIL RIGHTS, UNITED STATES POWER SQUADRONS, PALISADES POWER SQUADRONS,

Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

Counter-Statement of Question Involved

Should a writ of certiorari be granted to review a denial of a petition to intervene which was first submitted after both the administrative hearing and appellate review of a case in which petitioners' interests were adequately represented at all levels by virtue of their being local affiliates of the national organization named in the suit.

Counter-Statement of the Case

On June 1, 1973, the New Jersey Division on Civil Rights ("Division") issued an Order holding United States Power Squadrons ("USPS") and the Palisades Power Squadrons, the named USPS local, public accommodations under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq. The order essentially required that USPS and Palisades cease denying women all the advantages, privileges and facilities of membership that men have enjoyed heretofore, and that women be subject to the same minimal membership criteria as have always been considered by USPS sufficient to guarantee the effective functioning and character of the organization. Palisades was the named local because it was that branch of USPS into which the complainant was denied membership. However, the Division's findings that Palisades and USPS were public accommodations were largely based upon an evaluation of the purposes, practices and procedures contained in USPS's national policies which apply to and are carried out by all local squadrons under USPS auspices. More specifically, the Hearing Examiner found that the raison de'etre of USPS is its educational function (Aa10),* as in the words of its Chief Commander:

> ". . . over all the years our mission has been to teach safety in Boating, Seamanship, etc.—not to

---

* This notation refers to the appendix filed by USPS with the Superior Court of New Jersey, Appellate Division, which was certified to the Court on February 10, 1976 in connection with the related case of *U.S. Power Squdrons, Palisades Power Squadron* v. *Marilyn C. Hinden, Division on Civil Rights,* No. 75-1553.

BLEED THROUGH

> be a fellowship and club organization." (1T 178-23 to 1T 179-7).*

This is emphasized in the constitution of the national organization, in which it is noted that the objects of USPS:

> "shall be to establish a high standard of skill in the handling and navigation of yachts; to encourage the study of the science of navigation and small boat handling; to cooperate with the agencies of the United States Government charged with the enforcement of the laws and regulations relating to navigation and to stimulate interest in activities which tend to the up-building of our Army, Navy, Coast Guard and Merchant Marine." (Aa48)

The national constitution lists the membership requirements of USPS as:

> "Any male person, 18 years of age or over, having sufficient nautical knowledge, who is a citizen of the United States of America and who passes the prescribed examination" (Aa49).

These aspects of the organization, along with other of its practices, activities and purposes, which are more fully set forth in the State's Motion to Dismiss and Brief in Support Thereof** filed in this Court mandated a finding by the New Jersey Division on Civil Rights that USPS is a public accommodation within the meaning of N.J.S.A. 10:5-5(l).

---

* The transcripts of the hearing below have been certified to this Court as part of the record in related case No. 75-1553.

** That motion and brief are filed in connection with related case No. 75-1553.

The first time that petitioners herein attempted to intervene below was five years after the administrative complaint was filed against USPS and Palisades in 1970, four years after the hearing was concluded in May of 1971, a year after the Notice of Appeal was filed in the state appellate court, and a month subsequent to the holding of that court affirming the Division. The Appellate Division of the New Jersey Superior Court denied petitioners' motion to intervene on July 11, 1975, and the Supreme Court of New Jersey denied an identical motion on December 10, 1975.

ARGUMENT

The petition for writ of certiorari should be denied because the motion for intervention below was properly denied as being grossly out of time as well as wholly unnecessary inasmuch as petitioners' interests were adequately represented by the named parties.

The rules under which petitioners attempted to intervene below are New Jersey Court Rule 4:33-1 and Rule 4:33-2 which are civil practice and not appellate rules. In addition to their motion being made under inapplicable rules, it was unclear from petitioners' papers whether they were seeking an opportunity for a trial of the facts, which, of course, was long since concluded, or an opportunity to intervene in a then non-existent appeal. Thus it is apparent that there was nothing below in which petitioners could have properly intervened.

Even assuming the Court rules were applicable and the issue was not moot, intervention was properly denied

BLEED THROUGH

in this case. Both Rule 4:33-1 and Rule 4:33-2* include the requirement that the application for intervention be timely. Both New Jersey and federal courts have held that untimeliness is a sufficient ground to deny intervention. See *State* v. *Lanza,* 39 N.J. 595, 190 A2d 374 (1963) app. dis. cert. den. 375 U.S. 451 (1964). In *Clark* v. *Brown,* 101 N.J. Super. 404, 244 A2d 514 (Law Div. 1968) where a motion to intervene subsequent to final judgment was denied, the court noted "Dismissal of a motion for intervention under R.R. 4:37-1 [presently Rule 4:33-1] is within the discretion of the trial court and untimeliness is sufficient ground for denying the same . . . Also, intervention after judgment is not often granted." *Id.* at 411. Further, as the court noted in *Township of Hanover* v. *Town of Morristown,* 118 N.J. Super. 136, 143, 286 A2d 728, 732 (Ch. Div. 1972) aff'd 121 N.J. Super. 536, 298 A2d 89 (App. Div. 1972), "An essential prerequisite to intervention is timeliness, which should be equated with diligence and prompt-

---

*R. 4:33-1: Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

R. 4:33-2: Upon timely application anyone may be permitted to intervene in an action if his claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a state or federal governmental agency or officer, or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the agency or officer upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

ness. One who is interested in pending litigation should not be permitted to stand on the sidelines, watch the proceedings and express his disagreement only when the results of the battle are in and he is dissatisfied." See also *Jacobs* v. *Volney Felt Mills,* 47 F.Supp. 493 (N.D. Ind. 1942); *Baltimore Trust Co.* v. *Interocean Oil Co.,* 30 F. Supp. 484 (D. Md. 1940).

In the instant case there cannot be even the most meager claim of timeliness on petitioners' part. The petition to intervene came after five years after the complaint was filed in 1970, over four years after the hearing was concluded on May 11, 1971, a year after the Notice of Appeal was filed and a month subsequent to the Appellate Division's decision upholding the Division's order. Furthermore, there has been no claim that petitioners were not aware of the ongoing proceedings throughout the last five years as well there could not be. In addition to newspaper coverage which the case had received, *Township of Hanover* v. *Morristown,* 118 N.J. Super. at 142, 286 A2d at 732 (Ra46-49)* petitioners are themselves local affiliates of the organization which was a party to the action. There appeared to be no good reason for petitioners' dilatoriness in presenting this motion at the conclusion of the hearing and appeal and for that reason alone it was properly denied.

In addition to the untimeliness of the request for intervention, it is clear that petitioners failed to meet a further requirement of Rule 4:33-1 for intervention in that they failed to show they were not adequately represented by existing parties. They claim to be separate and distinct entities from USPS, however they offer virtually

---

* This notation refers to the appendix filed by the Division on Civil Rights with the Superior Court of New Jersey, Appellate Division, which was certified to this Court on February 10, 1976 in connection with related case No. 75-1553.

BLEED THROUGH

no evidence that this is so. Although they assert that their membership practices are selective and therefore different from the general policy of USPS, a close reading of the affidavit submitted below in support of that contention does not contradict the Division's findings that a large majority of men taking the basic boating course are asked to become members (Pa16-21). In any event, more selective membership practices are the only characteristics which petitioners claim differentiate themselves from USPS. In fact, since they are actually affiliated with and part of United States Power Squadrons, their interests could not have escaped representation below. Since the affiliates are governed by the national's constitution, and the national was held to be a public accommodation under the Law Against Discrimination by virtue of the agglomeration of its purposes and practices, the order is entirely proper as regards its affect on all New Jersey affiliates and petitioners cannot now be heard to complain.

Petitioners have presented no authority for the theory that a holding as to the character of a national organization with many local affiliates is only binding upon the locals actually named in the suit. In fact, it is apparent in a number of the cases cited in support of their position that the court recognized the affect of its holding on all the locals within the jurisdiction. *Junior Chamber of Commerce* v. *U.S. Jaycees,* 495 F2d 883 (10th Cir. 1974), cert. den. 419 U.S. 1026 (1974); *Cornelius* v. *Benevolent Protective Order of the Elks,* 382 F.Supp. 1183 (D. Conn. 1974); *Brunson* v. *Rutherford Lodge No. 547,* 128 N.J. Super. 66, 72, 319 A2d 80, 83 (Law Div. 1974).

Finally, Rule 4:33-2 provides when considering motions for permissive intervention: "In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of

the original parties." The complainant in this case had waited over four years for an adjudication of this matter. All issues raised by petitioners herein, including that of associational freedom had been raised, briefed and argued extensively on all levels of the proceeding. To grant intervention to parties who had been unduly lax about asserting their interest, which in any case had been fully represented throughout, would only have further delayed the process in which all issues raised had already been decided.

In sum, then, because there was no proceeding in existence at the time of their motion below in which petitioners could have intervened, and, in addition, because of the gross untimeliness of their motion, the fact that their interests were adquately represented throughout the proceeding and intervention would only have caused further delay without good reason, the motion to intervene below was properly denied.

CONCLUSION

It is respectfully submitted that for the foregoing reasons, the petition for a writ of certiorari should be denied.

WILLIAM F. HYLAND
Attorney General of the State of New Jersey
Attorney for Respondents, Hinden and Potter